

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

CURTIS SULLIVAN,

Plaintiff,

vs.

THE STATE OF MONTANA, et al.,

Defendants.

Cause No. CV 11-00034-H-DWM-RKS

FINDINGS AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS

On July 1, 2011, the Court received a nearly incoherent document from Mr. Sullivan entitled "Miscarriage of Justice – Procedural Default." (C.D. 2). That document indicated it was a brief on the issues of malicious prosecution, miscarriage of justice, procedural default, false imprisonment 10 years, revocation to block due process, and mail theft per M.S.P. attempted manslaughter. (C.D. 2, p. 1). He attached what appears to be the first page of a durable power of attorney for health care to his complaint.

On July 7, 2011, Mr. Sullivan submitted a "Motion to Proceed in Forma Pauperis and Motion for Consel [sic] as pro-se litigant is noncompus mentis, causa mortis, and a slave mason, acient [sic] Hebrew." (C.D. 1, p. 1).

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On July 20, 2011, Mr. Sullivan filed a "Motion to Leave" which was construed as a motion for leave to amend his complaint. (C.D. 3). This document asks the Court to order medical care at St. Peter's Hospital.

Although Mr. Sullivan sent in what was construed as a complaint a week before his motion to proceed in forma pauperis, these documents have been filed together in one case. Regardless of the filing dates for Mr. Sullivan's documents he remains subject to the three strikes rule of 28 U.S.C. § 1915(g) which provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Mr. Sullivan has been issued strikes pursuant to 28 U.S.C. § 1915(g) for failure to state a claim in the following three cases: Civil Action Nos. 09-CV-39-GF-SEH-RKS (§ 1983 filed May 14, 2009; closed August 3, 2009); 08-CV-22-H-DWM-RKS (§ 1983 filed March 27, 2008; closed May 1, 2008); and 09-CV-06-H-DWM-RKS (§ 1983 filed March 2, 2009; closed May 20, 2009).

Therefore, Mr. Sullivan falls squarely within the three-strikes provision of 28 U.S.C. § 1915(g) and he may not proceed in forma pauperis unless he is in

"imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

It is difficult to discern the basis of Mr. Sullivan's Complaint. Since his Complaint complains of malicious prosecution, etc., it appears his claims revolve around his conviction. Although his Motion to Proceed in Forma Pauperis names some of the doctors at the prison, there are no claims of imminent danger of serious physical injury. The same is true of his "Motion to Leave" which lists medical care he is seeking without any indication that he is in imminent danger of serious physical injury.

Therefore, the Motion to Proceed in forma pauperis should be denied. In accordance with Minetti v. Port of Seattle, 152 F.3d 1113 (9th Cir. 1998), the Court is not required to give Mr. Sullivan ten days to file written objections to the recommendation that his in forma pauperis application be denied. Minetti, 152 F.3d at 1114.

Based on the foregoing, the Court hereby enters the following:

RECOMMENDATIONS

1. Mr. Sullivan's Motion to Proceed in Forma Pauperis (C.D. 1) should be denied pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court should be directed to terminate all pending motions

and close the case.

3. No motions for reconsideration or rehearing should be entertained and the Clerk of Court should be directed to discard any such motions.

The Clerk of Court is directed to forward this Recommendation directly to the District Judge for his consideration.

DATED this 28th day of July, 2011.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge